

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|-----------------------------|---|-------------------|
| CATICE MOSLEY, |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION FILE |
| |) | NO. _____ |
| v. |) | |
| |) | |
| MERCHANTS DISTRIBUTORS, |) | |
| LLC; DUSTIN LANE KIRBY; and |) | |
| AON RISK SERVICES SOUTH, |) | |
| INC., |) | |
| |) | |
| Defendants. |) | |

NOTICE OF REMOVAL

COME NOW defendants Merchants Distributors, LLC ("Merchants") and Dustin Lane Kirby ("these defendants") and, pursuant to 28 U.S.C. §§ 1441 and 1446, file this notice of removal within the time prescribed by law, showing the Court as follows:

1.

On August 10, 2023, plaintiff filed a complaint in the State Court of Gwinnett County, Georgia Civil Action No. 23-C-05709-S1, which county is within the Atlanta Division of the Northern District of Georgia.

2.

A true and correct copy of all process, pleadings, and orders filed in connection with this action is attached hereto as Exhibit A. These defendants have no knowledge of any other process, pleadings, or orders served in connection with this action, other than those attached hereto.

3.

This Court has original jurisdiction over the above-referenced case under 28 U.S.C. § 1332.

4.

There is complete diversity among the parties.

5.

Plaintiff is a citizen of the State of Georgia. (Compl., ¶ 2.)

6.

Defendant Dustin Lane Kirby is a citizen of the State of North Carolina. (Compl., ¶ 2.)

7.

Defendant Merchants is a North Carolina limited liability company with its principal place of business in the State of North Carolina. (Compl., ¶ 4; *see also* Georgia Secretary of State, *Business Search results* attached hereto as Exhibit B.)

Upon information and belief, the sole member of Merchants is Alex Lee, Inc., a North Carolina corporation with its principal place of business in the State of North Carolina. (*See* North Carolina Secretary of State, *Business Search results* attached hereto as Exhibit D.)

8.

Defendant Aon Risk Services South, Inc. ("Aon") is a North Carolina corporation with its principal place of business in the State of Illinois. (Compl., ¶ 6; *see also* Georgia Secretary of State, *Business Search results* attached hereto as Exhibit C.)

9.

The amount in controversy meets the jurisdictional requirements. Plaintiff seeks in excess of \$75,000, exclusive of interest and costs; specifically, plaintiff seeks over \$100,236.86 in damages for medical expenses in addition to undetermined general damages. (Compl., ¶ 43)

10.

Plaintiff asserts a claim against Aon under Georgia's direct action statutes, O.C.G.A. §§ 40-1-112 (c) and 40-2-140(d)(4), based on the erroneous allegation that Aon is the "insurer" of Merchants. (Compl., ¶¶ 39-41) However, Aon is an insurance **broker**, not an insurance company. *See, e.g., Terry Hunt Const. Co., Inc.*

v. AON Risk Services, Inc., 272 Ga. App. 547, 547 (2005). Therefore, Aon is not a proper party and its consent to removal is not required. *See Rembrant, Inc. v. Phillips Const. Co.*, 500 F.Supp. 766, 769 (S.D.G.A. 1980) ("a party improperly joined" does not need to consent to removal). *See also Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97, (1921) (the "right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy").

11.

The undersigned has read this notice of removal, and to the best of the undersigned's knowledge, information, and belief, formed after reasonable inquiry, it is well-grounded in fact; is warranted by existing law; and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

WHEREFORE, this notice of removal having been filed, said action shall proceed in the United States District Court for the Northern District of Georgia, Atlanta Division, and no further proceedings shall be held in said case in the State Court of Gwinnett County.

STONE KALFUS LLP

/s/ Aleksandra Mitchell

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CERTIFICATE OF SERVICE

This is to certify that I have this date served the foregoing *Notice of Removal* to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants and mailed by United States Postal Service, first-class, postage prepaid, a paper copy of the same document to counsel of record who are non-CM/ECF participants. Counsel of record is:

Reginald A. Greene, Esq.
Jasmine M. Williams, Esq.
Greene Legal Group LLC
One Georgia Center, Suite 605
600 West Peachtree Street
Atlanta, GA 30308

This 8th day of September, 2023.

/s/ Aleksandra Mitchell
Aleksandra Mitchell
Georgia Bar No. 136019

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EXHIBIT A

EXHIBIT B

EXHIBIT C